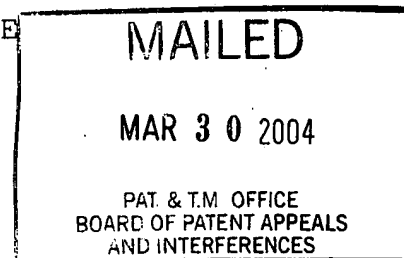


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte MASAO NOGUCHI, AKIHIKO NAKASHIMA, SHIGERU SHIRAI,
MASAAKI KAWAGURI, and SATOSHI FURUTA

Appeal No. 2004-0672
Application No. 09/894,704

ON BRIEF

Before KIMLIN, GARRIS, and JEFFREY T. SMITH, Administrative
Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 40, 41, 50 and 52-64. The only other claims remaining in the application are claims 42-47, which stand withdrawn from further consideration by the examiner as being directed to a nonelected species, and claim 51, which stands objected to by the

examiner as depending from a rejected claim but otherwise allowable.

The subject matter on appeal relates to a water shower apparatus. With reference to Figures 1-9 of the appellants' drawing,¹ the apparatus comprises a main body 1 having a plurality of arms 11 and a plurality of spray nozzles 8, 9 and 14-16. Further details of this appealed subject matter are set forth in representative independent claims 40 and 56 which read as follows:

40. A water shower apparatus comprising:

a main body positioned behind a back of a bather,
a plurality of arms supported movably on said main body, and
a spray nozzle on each of said arms for spraying water,

wherein said arms are movable towards and away from each other, and a width of positions where said arms are supported by said main body is narrower than a breadth of shoulders of the bather.

56. A water shower apparatus comprising:

a plurality of arms movable to a showering position and
spraying water from a water source,

¹ As correctly explained by the examiner on pages 1 and 2 of the answer, the appellants' "SUMMARY OF THE INVENTION" on page 2 of the brief incorrectly describes the subject matter on appeal with reference to their Figures 10 et seq. which relate to a nonelected species (e.g., see Paper No. 11).

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a plurality of first spray nozzles for receiving water from said water source and spraying a substantially flat spray of water in a substantially vertical plane.

The references set forth below are relied upon by the examiner in the section 102 and section 103 rejections before us:

Yoshida et al. (Yoshida)	6,195,814	Mar. 6, 2001
Shirai et al. (Shirai)	10-028656	Feb. 3, 1998
(Japanese Patent Application Laid-open)		
(Translation copy attached)		

Claims 56-64 stand rejected under the first paragraph of 35 U.S.C. § 112 as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention.

Claims 40, 41, 50 and 52-55 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Yoshida.

Claims 56-62 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshida in view of the Japanese reference.

As reflected on page 3 of the brief and confirmed on page 2 of the answer, independent claims 40 and 56 have been separately grouped and argued on this appeal. However, the dependent claims will stand or fall with their respective parent claims 40 and 56. See 37 CFR § 1.192(c)(7)(2002).

We refer to the brief and to the answer for an exposition of the opposing viewpoints expressed by the appellants and by the examiner concerning the above noted rejections.

OPINION

For the reasons which follow, we will sustain the section 102 and section 103 rejections but not the section 112, first paragraph, rejection.

Concerning the section 112, first paragraph, rejection, the written description requirement of this paragraph demands that an original disclosure must convey with reasonable clarity to those skilled in the art that the applicant, as of the filing date sought, was in possession of the invention defined by the claims under consideration. Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1116-17 (Fed. Cir. 1991).

According to the examiner, the appellants' disclosure regarding the embodiments of Figures 1-9 fails to comply with the written description requirement with respect to the claim 56 feature "a substantially flat spray of water in a substantially vertical plane." The appellants contend that this claim feature satisfies the written description requirement by way of their originally filed specification disclosure particularly the disclosure on pages 10 and 12. The examiner rebuts the

appellants' contention by arguing that, "[w]hile some of the terms used to define the feature of the contested claim language can be found amongst the wording in the two sections [i.e., specification pages 10 and 12], such does not appear to set forth the particular combination of features set forth by the [claim 56] language quoted supra" (answer, page 4).

We cannot agree with the examiner's viewpoint. The disclosures on pages 10 and 12 both refer to the spray nozzles which form a cold air intercepting screen (e.g., see the first full paragraph on specification page 10). These spray nozzles are described as producing a shower having "a flat spray shape" in the paragraph bridging specification pages 10-11 and as producing a spray pattern (i.e., via the second spray nozzle) which is "about vertical" in the first sentence of the paragraph beginning on specification page 12. Under these circumstances, we are persuaded that the above discussed disclosures of the appellants' originally filed specification would convey to an artisan that the appellants had possession on their filing date of the claim 56 subject matter "a substantially flat spray of water in a substantially vertical plane."

It follows that we cannot sustain the examiner's section 112, first paragraph, rejection of claims 56-64.

We begin our assessment of the section 102 rejection by setting forth the long established legal principle that anticipation is established when a single prior art reference discloses, expressly or under principles of inherency, each and every element of the claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

In applying this legal principle to the anticipation issue before us, we are convinced that the examiner's section 102 rejection is well taken. Concerning this rejection, the only argument advanced in the brief is that "[a]ppellant's [sic, appellants'] representative does not see where these arms [of Yoshida] are movable towards and away from each other" (brief, page 4). However, the right and left arms 47 of patentee's shower apparatus are expressly disclosed as separately adjustable (i.e., rotatably adjustable about shaft 28A) such that one arm can be moved relative to the other (e.g., see lines 11-14 and lines 22-35 in column 18, the paragraph bridging columns 18 and 19 as well as Figures 11, 16 and 31). It follows that, when these right and left arms are rotated in opposite clockwise

and/or counter clockwise directions, they are moved towards and/or away from one another in accordance with appealed independent claim 40.

In light of the foregoing, we hereby sustain the examiner's section 102 rejection of claims 40, 41, 50 and 52-55 as being anticipated by Yoshida.

As for the section 103 rejection of independent claim 56, the only controversy before us relates to the here claimed feature of "a plurality of first spray nozzles for receiving water from said water source and spraying a substantially flat spray of water in a substantially vertical plane." On page 5 of the brief, the appellants argue that "it is not understood how the Official Action is able to conclude that the prior art nozzles produce a flat spray of water in a substantially vertical plane." This argument is unconvincing for a number of reasons.

First, as pointed out by the examiner on page 6 of the answer (and not disputed by the appellants), the appellants themselves "disclose in the first full paragraph on page 40 of the instant specification, 'the second wide-angle spray nozzle 9 is a nozzle realized by applying the principle of nozzle indicated in the Japanese Laid-Open Patent No. 10-28656'." As previously explained, this second spray nozzle is described on

specification pages 10 and 12 as producing "a substantially flat spray of water in a substantially vertical plane" as required by rejected claim 56. Thus, the appellants' own disclosure (1) militates for the examiner's position that the spray nozzles of the Japanese reference are capable of producing a flat spray of water in a substantially vertical plane as here claimed but (2) militates against the appellants' aforequoted contrary position. Under these circumstances, we consider the examiner to have properly shifted to the appellants the burden of persuasion vis-à-vis their argued position. On the record of this appeal, the appellants have failed to carry such burden.

Additionally, we observe that nozzles 45, 46 and 48 of Yoshida are designed so that the direction and the pattern of spray is adjustable (e.g., see lines 11-48 in column 14, the last paragraph in column 17 and the first paragraph in column 18). In view of this adjustability, it is apparent that these nozzles are capable of being disposed in a vertical spray direction (e.g., see Figures 11 and 16) and that these nozzles are capable of producing a spray pattern, at least a portion of which would be in the form of a flat spray. It is our determination, therefore, that the shower apparatus of Yoshida includes a plurality of spray nozzles capable of producing "a substantially flat spray of

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water in a substantially vertical plane" pursuant to the independent claim under review. Viewed from this perspective, it appears that claim 56 does not distinguish over Yoshida considered alone. See In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982) (evidence establishing lack of novelty necessarily evidences obviousness).

For the above stated reasons, the reference evidence applied in the examiner's section 103 rejection establishes a prima facie case of unpatentability which the appellants have failed to rebut with argument and/or evidence of patentability. We hereby sustain, therefore, the section 103 rejection of claims 56-62 as being unpatentable over Yoshida in view of the Japanese reference. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

The decision of the examiner is affirmed-in-part.


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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

Edward C. Kimlin
Administrative Patent Judge

Bradley R. Garriss
Administrative Patent Judge


Jeffrey T. Smith
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

BRG:tdl

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